



Comptroller General  
of the United States

Washington, D.C. 20548

145143

## Decision

**Matter of:** Med-National, Inc.

**File:** B-246192

**Date:** October 24, 1991

Donald E. Barnhill, Esq., East & Barnhill, for the protester.  
Catherine M. Evans, Esq., and David Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Where solicitation did not provide for application of an evaluation preference for small disadvantaged business concerns, allegation that agency failed to apply preference amounts is dismissed as untimely; apparent solicitation improprieties are required to be protested prior to the time set for receipt of proposals.

2. Protest of agency's improper application of evaluation criteria is dismissed where evaluation was consistent with reasonable interpretation of solicitation evaluation criteria and any inconsistency in evaluation criteria was apparent on the face of solicitation but was not protested prior to time set for receipt of initial proposals as required by General Accounting Office Bid Protest Regulations.

### DECISION

Med-National, Inc. protests the award of a contract to Sterling Medical Associates under request for proposals (RFP) No. DADA10-91-R-0006, issued by the Department of the Army for radiology services at various Army medical facilities. Med-National alleges that the agency improperly failed to apply to its offer an evaluation preference for small disadvantaged business (SDB) concerns, and that the agency failed to follow other stated evaluation criteria.

We dismiss the protest as untimely.

Under our Bid Protest Regulations, protests of alleged solicitation improprieties are required to be filed prior to the time set for receipt of proposals, 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991); Manatts, Inc., B-237532, Feb. 16, 1990, 90-1 CPD ¶ 287. Here, although the RFP contained the Small Disadvantaged Business Concern Representation clause, Department of Defense Federal Acquisition Regulation Supplement § 252.219-7005, it did not provide for application of an SDB evaluation preference. Thus, Med-National was on notice that the agency did not challenge this apparent solicitation defect prior to the time set for receipt of proposals, its protest on this ground is untimely. Id.

Med-National notes that the RFP provided for evaluation of proposals under three factors--personnel qualifications, business management/understanding of the requirement/commitment, and price--with price less important than the first two factors. At the same time, the RFP stated that award would be made based on the technically acceptable proposal offering the lowest price; the agency made award to Sterling in accordance with this provision. Med-National argues that the two provisions are in conflict, and that it therefore is not clear whether award properly was based on the low-priced, technically acceptable offer. While the solicitation evaluation provisions may have been unclear in this regard, Med-National's failure to raise this apparent ambiguity before proposals were due renders its protest in this regard untimely. 4 C.F.R. § 21.2(a)(1) supra; Manatts, Inc., supra.

The protest is dismissed.



John M. Melody  
Assistant General Counsel